VOL. CXIV. LONDON: SATURDAY, OCTOBER 14, 1950. No. 41

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Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

Borough of Luton

Appointment of Second Male Assistant to the Clerk to the Justices

APPLICATIONS are invited for the above appointment at a salary according to Grade III, A.P.T. Division of the National Joint Council, (£450-£495).

Candidates must have a sound knowledge of all the duties of a Magistrates' Clerk's office, and be competent to take the Court when required.

The appointment will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to undergo a medical examination for that purpose.

Applications, in candidate's own handwriting, together with two recent testimonials, should reach the undersigned by November 4, 1950, endorsed "Second Male Assistant."

GILBERT H. F. MUMFORD,
Clerk to the Justices.

14, Upper George Street,
Luton, Beds.

Eston Urban District Council

Appointment of Clerk and Solicitor

APPLICATIONS for the above appointment are invited from solicitors having extensive experience in local government law and administration.

The salary will be £1,500 per annum, rising by four annual increments of £50 to £1,700 per annum, in addition to which certain fees will be retained by the officer appointed in accordance with the Conditions of Service of the Joint Negotiating Committee for Town Clerks and District Council Clerks, which will apply in full to the appointment.

The person appointed will be required to devote his whole time to the duties of the office. These duties will include acting as Clerk to the Eston Education Sub-Committee of the North Riding County Council and associated school governors, and the salary offered will be subject to abatement by the amount of £150 per annum in the event of the person appointed no longer being required to undertake educational duties.

The appointment will be determinable by three months' notice on either side.

Previous experience of education administration is not essential.

The selected candidate will be required to pass a medical examination.

Applications, accompanied by copies of two recent testimonials, must be delivered at my office not later than October 25, 1950.

B. R. W. GOFTON,
Clerk of the Council.

Council Offices,
Grangetown-on-Tees.
October 2, 1950.

Metropolitan Borough of Poplar

Appointment of Legal Assistant in the Town Clerk's Department

APPLICATIONS for this post are invited from solicitors of at least two years' standing, on Grade A.P.T. VII in the National Scheme of Conditions of Service. The duties will include conveyancing, preparation of contracts and agreements, and dealing with the procedure associated with compulsory acquisition of land. Previous local government experience will be an advantage. Forms of application, with full particulars of the conditions of appointment, can be obtained from the undersigned, by whom applications must be received not later than November 18, 1950.

S. A. HAMILTON,
Town Clerk.

Poplar Town Hall,
Bow Road, E.3.
October 14, 1950.

Amended Advertisement.

Berks County Council

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor in the office of the Clerk of the Berks County Council at a salary within Grade A.P.T. VIII (£685 × £25—£760 per annum). The appointment is superannuable and subject to medical examination. Candidates should have been admitted at least two years, should possess local government experience and a sound knowledge of conveyancing and advocacy and a knowledge of planning.

Application to be made on forms to be obtained from the undersigned. Closing date October 25, 1950.

H. J. C. NEOBARD,
Clerk of the Council.

Shire Hall,
Reading.
September 29, 1950.

Lancashire No. 8 Combined Probation Area Committee

Full-time Female Probation Officer

APPLICATIONS are invited for the above appointment. The appointment will be subject to the Probation Rules. The successful candidate will be required to pass a medical examination.

Applications stating age, qualifications and experience, with copies of not more than two recent testimonials, must reach the undersigned not later than October 31, 1950.

J. H. WHITTINGHAM,
Clerk to the Combined Area Committee.

The Courts,
Bolton.

Borough of Ilford

Appointment of Senior Assistant Solicitor

APPLICATIONS are invited for the appointment of Senior Assistant Solicitor at a salary within Grades IX or X of the A.P.T. Division (£750 × £50—£900, or £850 × £50—£1,000, plus London weighting), according to the qualifications and experience of the person selected.

Applicants should be experienced in local government law and administration and have a sound knowledge of conveyancing and common law, and be experienced advocates.

Conditions of appointment and form of application may be obtained from the undersigned, to whom applications (accompanied by the names of two persons to whom reference may be made) should be submitted not later than October 28, 1950.

K. F. B. NICHOLLS,
Town Clerk.

Town Hall,
Ilford, Essex.
September, 1950.

Metropolitan Magistrates' Courts Area

Appointment of Senior Probation Officer in the London Probation Service

APPLICATIONS are invited from serving probation officers (men and women) for the post of Senior Probation Officer in the Metropolitan Magistrates' Courts Area.

The appointment will be made by the Secretary of State for the Home Department, and will carry an annual allowance of £50 in addition to scale salary (plus the Metropolitan addition of £30 a year).

The person appointed may be required to serve in any part of the Area, and will be assigned to such court as the Secretary of State may from time to time decide.

Forms of application may be obtained from the Probation Branch, Home Office, Whitehall, S.W.1, and must be returned not later than October 28, 1950.

Dorset Combined Probation Area

Appointment of Full-Time Male Probation Officer

APPLICATIONS are invited for the above appointment in the Dorset Combined Probation Area.

The appointment will be subject to the Probation Rules, and the salary will be in accordance with these Rules, subject to the appropriate Superannuation deductions, plus a travelling allowance in accordance with the County Scale. The successful candidate will be required to pass a medical examination.

Forms of application and particulars of the appointment may be obtained from the undersigned, to whom applications should be returned not later than October 28, 1950, with the names and addresses of not more than three persons to whom reference may be made.

Canvassing, either directly or indirectly, will be a disqualification.

C. P. BRUTTON,
Clerk to the Probation Committee.

County Hall,
Dorchester.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

A New Point on Bias

There have been cases where bias has been found or alleged when justices have had to deal with applications under the Small Tenements Recovery Act, 1838. In the nature of the case, bias is rather more likely to be alleged where the decision goes in favour of the landlord than where it goes in favour of the tenant, as it had done in *R. v. Lower Munslow Justices, ex parte Pudge* [1950] 1 All E.R. 756. The alleged bias here was in favour of the tenant, but it is none the less satisfactory, from all points of view, that the allegation failed. As the Lord Chief Justice indicated in the leading judgment on an application for *certiorari*, some of the facts are such as may easily occur, where the clerk to the magistrates is a solicitor in private practice. The owner of the house, who had applied for an order under the Small Tenements Recovery Act, had bought it in 1946 from a vendor for whom the clerk to the magistrates had acted in his private capacity. Requisitions on title, which the vendor's solicitor had answered in the ordinary course, had shown that the tenancy of Mrs. Bowen (against whom the ejectment order was applied for) was a yearly tenancy. When the case came before the magistrates it appeared that the notice given by the landlord had been insufficient to put an end to a yearly tenancy : the landlord contended that the tenancy was weekly. Receipts produced by the tenant in the course of her evidence convinced the magistrates, before she had finished her evidence in chief, that the tenancy was not a weekly one ; they thereupon stopped the case and gave a decision in her favour. The clerk to the magistrates had not, up to that point, informed them that he knew anything about the tenancy beyond what had just been stated in court, but after the decision of the justices had been announced by the chairman, the clerk, unwisely as it seems to us, remarked that it was within his own knowledge, through his having acted for the former owner on the occasion of the sale to the present landlord, that the tenancy was from year to year. This remark was one of the grounds upon which the landlord tried to upset the decision of the justices. The other ground is of more general application, *i.e.*, not turning on the particular facts. This was that, once Mrs. Bowen had started her evidence in chief, she ought to have been allowed to finish that evidence and be subjected to cross examination. There is a certain logic in this claim. If a plaintiff is stopped and judgment given for him, or if judgment is given for the plaintiff immediately on the conclusion of his evidence, the miscarriage of justice is obvious. It may be asked why it should be open to a court to find in favour of a defendant, upon the defendant's own statement, before this has been tested. The answer, as given by the Divisional Court, is that once the plaintiff's case has been concluded, it is always open to a court to find for the defendant, whether the defendant has given evidence or called witnesses, or has addressed the court, or has done none of these things. Nevertheless, Lord Goddard and Finnemore, J., did indicate that, once a defendant has started to give evidence, it is probably wise to let him finish and to be cross examined, if only because this dispossesses the mind of the plaintiff of any idea that the court is being swayed by untested evidence.

Directions from the High Court

Although the case in which the observations were made was heard in the Court of Criminal Appeal and the attention of Recorders was called to them, the principle is of general application and is of importance to justices. The Court of Criminal Appeal, according to a report in *The Times* of October 4, had before them an appeal against a sentence of five years' preventive detention. In fact notice had been received that the appeal had been withdrawn, but the Lord Chief Justice said that he wished to say that he could not understand why attention was not paid to what the Court had said about sentences of preventive detention. They had laid it down frequently that a sentence of five years' preventive detention ought not to be passed except, perhaps, in the case of an elderly man, when it was not desirable that he should end his days in prison.

In other cases, Lord Goddard continued, a sentence of five years' preventive detention was perfectly futile as a protection of the public. If a Court was not prepared to deprive a man of his liberty for more than five years the sentence should be one of imprisonment and in a case like the one in question the sentence should be either eight years' preventive detention or five years' imprisonment. The appeal having been withdrawn, the Court was not able in this case to interfere with the sentence. Lord Goddard concluded by saying that the Court hoped that they would not have again to tell Recorders that they must pay attention to what the Court had said.

Justices should take these words to heart, and should apply the principle behind them to cases coming before them. There have been many decisions of the High Court on cases stated in which that Court has indicated the way in which justices should deal with particular matters. Once the High Court has so expressed its views it is not for justices to say that they think the matter can be better dealt with in some other way or to fail to follow any directions so given. We can mention the matters of justices giving their reasons for decisions in matrimonial cases, and of their finding special reasons in Road Traffic cases. In the former class of case when justices fail to give their reasons

it is probably from ignorance of the High Courts' requirements, but there is no excuse for this because the necessity for their so doing has frequently been emphasized. In the latter class justices may feel, in an individual case, that it is very hard on the defendant if they are not able to say that certain circumstances constitute special reasons for ordering that there shall be no disqualification, but they must not allow their sympathy with the defendant to lead them into giving a decision which does not follow the principles laid down by the High Court for their guidance. So far as it is possible the administration of the law should be certain and precise, and not a matter dependent on the individual views and fancies of different benches or magistrates. On points where there are doubts as to the meaning of a statute or as to the correctness of a certain procedure the High Court is able to decide what is to be done and so to standardize the matter throughout the country. It is of the utmost importance that all inferior courts should follow and abide by these High Court decisions.

What is Known About the Accused ?

Before a court can properly decide how best to deal with a convicted person it must have all relevant information which is available as to his past life. The Home Office have issued a circular addressed to clerks of assize and clerks of the peace, in which they suggest a method by which such information can readily and conveniently be made available to the courts. It is stated that there have been suggestions that there should be a standard practice as to the giving of evidence on this matter, and that the Director of Public Prosecutions has prepared a number of suggestions as to the practice which might be followed by the police. It is added that these suggestions have the approval of the Lord Chief Justice, but they are not to be regarded as rules to be strictly followed, and if a particular court prefers that the evidence should be given in some other way the wishes and practice of the court should be followed.

The method suggested in the circular is that the officer should prepare a proof of his evidence and should give a copy to counsel for the prosecution and, *after conviction*, should hand a copy to the court and one to counsel for the defence. Counsel for the prosecution should examine the officer from this proof in the ordinary way.

The circular goes on to detail various headings under which information should be given, there being one set of particulars in the case of offenders under twenty-one and a different set for those over twenty-one.

It is suggested that information about an offender's general reputation and associates should not be included in the proof, and should not be given except in answer to questions allowed by the court as relevant in the particular case. Every care must be taken by the officer to ensure that such information is " based on a reasonable foundation of fact."

The circular, as we have said, is addressed to the clerks of assize and clerks of the peace, but it deals with a matter which is of equal concern to magistrates, and will be of interest to them and to clerks to justices. It is referred to as Home Office Circular No. 187/1950.

Road Traffic Laws and their Administration

We referred in a note of the week at p. 275 of this year's volume to an address given by Professor Goodhart, K.B.E., K.C., to the meeting of the Pedestrians' Association at Caxton Hall on May 10. This address has now been printed in pamphlet form. It is published by the Pedestrians' Association and is obtainable, price 4*d*., from their office at Mitre House, 44-5, Fleet Street, E.C.4.

The problems with which Professor Goodhart dealt, continue to attract public attention, and in a letter published in *The Times* on October 3, 1950, Sir Leo Page puts forward a suggestion that the police should adopt, in dealing with " road-hogs " tactics similar to those used to detect and arrest other offenders, pick-pockets for example. He argues that the offence of criminal driving (*i.e.*, driving which is an offence against the law), has no necessary connexion with the occurrence of an accident, and yet the common experience of courts is that cases are seldom brought except when there has been an accident. He wants police patrols, with the officers in plain clothes and in cars not recognizable as police cars, to look out for and to take proceedings against those drivers who drive in a way that contravenes the law without necessarily causing an accident which brings their bad driving to public notice.

We have no doubt that this idea must have occurred to the police, but there are, we feel, some practical difficulties to be overcome. By s. 20 (3) of the Road Traffic Act, 1930, it is an offence to fail to stop a vehicle on being so required by a police constable *in uniform*, and in these days of violent crime in which a motor car is often employed by offenders the police may well hesitate before adopting any procedure which might involve an attempt to stop a motorist on the road by the use of a car whose occupants were all in plain clothes and who might be mistaken, by the motorist they wished to stop, for car bandits.

We note that Sir Leo proposes that there should be not less than three officers in the police car, including one of higher rank, and possibly he has in mind that no attempt should be made at the time to stop the offending motorist, but that the alleged offence should be reported and that the provisions of s. 21 of the Act of 1930 should thereafter be complied with. This must mean that the motorist would have nothing, at the time, to call his attention to any particular incident. He would be faced in court by three officers who had all concentrated on that incident and he might, quite genuinely, have no recollection of it at all. Now it might be quite right and proper for convictions to take place in such circumstances, but to the motorist in question and quite possibly to the public present in court it might not always appear that justice was being done. A defendant is entitled to put forward his defence and his explanation of what is alleged to have occurred. If he has, with reasonable justification, no sort of recollection of the occurrence it is difficult for him, whatever the merits of his case might be, to make any defence.

We do not belittle the need for bringing offenders to justice and we think that, if the practical difficulties can be overcome, there is a great deal to be said for a scheme such as that proposed by Sir Leo. As he rightly states the great majority of motorists wish to drive well and safely and the minority of " road-hogs " should be suitably dealt with.

Smallholdings Policy

Considerable light shed on the Government's policy under the Agriculture Act, 1947, Part IV, during an adjournment debate in the House of Commons, will interest many " smallholdings authorities " who, by s. 47 (2), are usually councils of counties other than London. Apparently, some pressure has been put upon these authorities to eliminate part-time holdings, which in some counties have been and, judging from the number of applications for them, continue to be, in substantial demand. The question is whether continuance of part-time holdings should be permitted in view of the " new policy " comprised in the Act of 1947, Part IV, which, according to the explanatory memorandum (Cmd. 6996) presented to Parliament in December, 1946, " aims at providing smallholdings for letting to people with previous agricultural experience so that they shall have an opportunity to become farmers on their own account."

Since then, the Smallholdings Advisory Council, appointed by the Minister of Agriculture to advise on the various matters arising in connexion with the administration of the Act of 1947, Part IV, have stated in their first report that they do not think the provision by some authorities of part-time holdings of a few acres of bare land is a wise policy, and recommended that powers under Part IV should be used solely for the provision of full-time holdings. The council disagreed from the theory that a man can learn the job of running a holding by such a part-time occupation, not being likely "to offer training in the management aspect of farming an agricultural unit on economic lines."

No departure from those views, nor from the policy contemplated by the Act of 1947, Part IV, was indicated in the reply to the debate by the Joint Parliamentary Secretary to the Ministry of Agriculture, and he implied some concern that the smallholdings authority largely responsible for instigating the debate had not, so far, submitted any proposal to implement the new policy. Possibly, the case of that authority is covered by the disinclination of the Advisory Council when they state, in para. 35 of their report, that they "cannot offer precise advice since circumstances and land qualities vary so much from county to county."

On the other hand, it would be unfortunate if smallholdings authorities should create an impression, by excessive criticism and dilatoriness, of refusal to co-operate in the application of Government policy. Local government has already suffered deep inroads through the failure of local legislators to bring livelier imaginations to bear on a changing social scene. Reiteration by the Parliamentary Secretary of an assurance that "nobody is insisting that there shall be wholesale notices to quit in order to convert existing part-time smallholdings into full-time holdings" recognizes the desirability of transitional adaptation of new policy to old practice. Smallholdings authorities can respond to that reasonable attitude by infusing old practice with new policy at the earliest possible moment.

A Class that Society Doesn't Much Care About

Our note upon *Yates* v. *Morris* 1950 2 All E.R. 577 at p. 548, *ante*, had gone to press before our attention had been drawn to *Frederick Platts Co., Ltd.* v. *Grigor* (1950) 66 T.L.R. 859, which does not seem to have been reported elsewhere. Upon comparing the decisions, we notice a point which was not brought out prominently in the report of the first mentioned case, namely, that the defendant tenant had not apparently been convicted, though she had more than once been warned by the police, for allowing the demised premises to be used for an immoral purpose. The plaintiff landlord, therefore, could not rely on the second limb of para. (*b*) ("convicted of using the premises or allowing them to be used for an immoral or illegal purpose") of the schedule to the Act of 1933, but only on the first limb ("guilty of conduct which is a nuisance or annoyance to adjoining occupiers"). Up to this point, the facts of the two cases were the same. But in *Platts* v. *Grigor* the defendant tenant was not shown to have allowed her flat to be used by other women for immoral purposes. She had merely used the flat for receiving men for immoral purposes herself, conduct not amounting to a criminal offence, and therefore, since she could not be "convicted," and since the flat was within the protection of the Rent Restrictions Acts, the plaintiff company, like the lessor in *Yates* v. *Morris*, could only rely on the first limb of the paragraph. The company themselves might conceivably, upon proof that they knew of their tenant's mode of life, have been prosecuted for "allowing," etc., as the defendant in *Yates* v. *Morris* might have been. For this reason if no other—and no doubt they had a perfectly genuine objection to her mode of life—it was obviously wise for them to take proceedings to get rid of her. But in those proceedings, being obliged to rely on the first limb of the paragraph, namely, "nuisance or annoyance to adjoining occupiers," they were apparently put upon proof, and they could not prove the nuisance or annoyance. The county court judge therefore held himself disabled from making an order for ejectment, and the majority of the Court of Appeal upheld him.

In a dissenting judgment, Denning, L.J., urged that actual proof of nuisance or annoyance was unnecessary, because "after all they (the adjoining occupiers) may be presumed to be reasonable people, and may be presumed to be annoyed by conduct which would annoy any reasonable adjoining occupier." This line of thought commends itself, in preference to that of the majority (and of the county court judge) to the learned editor of the *Law Quarterly Review*, p. 289, but, with respect, is it sound? In *Yates* v. *Morris* the report of the case in the Court of Appeal does not suggest that the learned judge of the Westminster County Court had required proof of nuisance or annoyance: the facts were much more flagrant than in *Platts* v. *Grigor*, in that not one woman (tenant of the house) had been using the house, but several sub-tenants had been bringing in their customers in large numbers. Lord Justice Denning's view seems to us to smack of the argument and evidence which used to be put forward by police advocates and witnesses, and accepted much too freely by some magistrates, in prosecutions under s. 28 of the Town Police Clauses Act, 1847. The offence there is loitering and importuning passengers in a street, to the obstruction or annoyance of residents or passengers. A street walker against whom obstruction could not be proved would be charged with annoyance; the only evidence would be that she had been seen to speak to men, without success, and the constable would add, as a matter of routine, that a man had walked away and "seemed to be annoyed"—although in truth he may not have been annoyed at all. There are two presumptions in Denning, L.J.'s, reasoning, of which, we submit with respect, either or both could be false. The adjoining occupiers may not be "reasonable people," as a lord justice understands the adjective—they may themselves be prostitutes, for if there is one flat so let in a house there are quite likely to be others. Or they may themselves be personally of irreproachably moral behaviour, and yet of so pre-Victorian an outlook that they would not think it reasonable to be annoyed, merely because a neighbouring flat was occupied by what a generation ago was called a pretty lady.

Under that title Arnold Bennett wrote the story of a French woman of moderately promiscuous but quite decorous habits. "After all" (to adopt his lordship's opening words as quoted above), the average householder or flat dweller wants his neighbours, primarily, to be tolerably quiet. If they and their guests get drunk and become rowdy, or they give riotous parties, and people run shouting up and down the stairs at midnight, it is no consolation to know that all the noise is made by married couples. If, however, the woman upstairs or next door goes out unobtrusively and comes in peaceably, even though she is accompanied by a series of male companions, the average adjoining occupier does not know and, we suspect, often does not feel called upon to care. Upon the facts of *Yates* v. *Morris*, it would have been much more likely that the "reasonable" adjoining occupier, such as a working man or woman lodging in the single house, whose sleep would be disturbed by the constant footsteps on the common stair, would be annoyed, than that, in *Platts* v. *Grigor*, people in neighbouring self-contained flats or separate houses would be annoyed. The majority judgment in the Court of Appeal seems more in accordance with everyday experience in 1950.

DISQUALIFICATION OF JUSTICES WHO ARE MEMBERS OF LOCAL AUTHORITIES

[CONTRIBUTED]

The Justices of the Peace Act, 1949, s. 3, deals with the vexed question of whether members of local authorities who are also justices may act as such in cases in which the authority is concerned. In the past, the practice has varied, some benches holding that there was a disqualification by reason of interest, and others taking the opposite view; the statute removes doubts, and "provides that no member of a local authority within the meaning of the Local Government Act, 1933, the London Government Act, 1939, or the Local Government (Scotland) Act, 1947, shall act as a justice in a court of quarter sessions or in a magistrates' court, in proceedings brought by or against or by way of appeal from a decision of the local authority or any committee or officer of the authority." It also enacts that a committee of a local authority includes a joint committee, joint board, joint authority, " or other combined body on which that authority is a member or is represented," and defines the meaning, for the purposes of the section, of the phrase " officer of a local authority." We will consider shortly just how wide this net is spread, but some indication may be given by the fact that it is thought necessary to provide, by subs. (4) that nothing shal be held to prevent a justice acting in proceedings for an offence by reason only of the fact that such proceedings are brought by a police officer. It has been held in the past that a police officer is not the officer of a local authority, but of the Crown (*Fisher* v. *Oldham Corporation* (1930) 94 J. P. 132). If this provision is really necessary it can only be because of the fact that police matters are dealt with in counties by the Standing Joint Committee, under the Local Government Act, 1888, s. 30, and in boroughs by the Watch Committee, under the Municipal Corporations Act, 1882, Part 9. Watch Committees are composed of elected, that is to say, elected at local government elections, members of the borough council, and of its aldermen, whilst standing joint committees are composed equally of a number of justices appointed by the quarter sessions, and a number of county councillors and aldermen. Members of these committees can act in ordinary police cases, but care must be taken where it is the custom of the local authority to delegate its duties of prosecution in such matters as road fund cases, to police officers. It may be that such delegation is *ultra vires*, but that question is outside the scope of this article, but such a prosecution is probably one by a local authority, and therefore an elected member, who is also a justice, should not act; the fact that the local authority is the fountain from which the proceedings spring differentiates this class of case from the ordinary police prosecution, which is decided upon by police officers independently of any instruction from the local authority.

The next point to consider arises from the wording of the section in which the prohibition is expressed. Leaving London to the Londoners, and Scotland to the Scots, and dealing with the rest of the country, the ban is against " members of local authorities within the meaning of the Local Government Act, 1933, which by s. 305 defines these as the councils of counties, county boroughs, county districts, or rural parishes. Now such a member must be an elected member, and the section is aimed at, and hits, him. Not only does it prevent him from acting in matters in which the authority is concerned, but the disability extends to those in which any joint committee is concerned. Many joint committees contain, however, members who are co-opted, or otherwise nominated, and who are not members of local authorities within the meaning of the Act of 1933, and it is the writer's opinion that s. 3 of the Act of 1949 does not prohibit these members from sitting. Thus, so far as the standing joint committee is concerned, of members of the council half will be prevented from sitting as justices in proceedings brought by or against either the county council or the standing joint committee, whilst members of the sessions half, so far as the section is concerned, could act in either, or both. Here again the writer is of the opinion that the question of interest crops up, and thinks that it would be improper for a sessions member to adjudicate in proceedings brought by or against the standing joint committee, but his point is that the Act of 1949 does not apply to him in this respect.

Now proceedings in which standing joint committees are concerned are rare, but every magistrates' court has to deal with proceedings brought by officers of education authorities. The situation is at its most complicated in county districts where the county council is the education authority and a divisional executive has been set up under the provisions of the Education Act, 1944, sch. 1. It is quite clear that members of the county council will be disqualified in education matters, but it must be remembered that divisional executives consist also of elected members of the county district councils nominated by those bodies, and of co-opted members. Here again we get the distinction: the co-opted members are not members of a local authority within the meaning of the 1933 Act, and so are untouched by the section: if they are debarred it is on the ground of interest. The elected members are plainly debarred, as the executive is a combined body on which the district council is represented, and the question is how far this disability goes. It is arguable that the local executive is a committee of both the county and the district council, and that where such a body exists all county councillors are prevented from adjudicating in matters concerning the district council as well as those of their own body, and that, conversely, district councillors will be barred from both local and county council matters, even if they are not themselves members of the local education executive.

It is interesting to recall that the position of members of education authorities was raised when the clause was under discussion in the House of Commons, in committee (December 6, 1949, *Hansard*, vol. 270, cols. 1732/3).

The writer is clerk to two county petty sessional divisions, the larger being mainly covered by a non-county borough, with some outlying parishes lying within three rural districts, and the smaller covered by a single rural district, the chairman of which has not exercised his right to sit as a justice by being sworn: no other member of any of the rural districts is a justice, whilst the other chairmen sit with other benches. No county councillor or alderman sits on the smaller bench, but the larger one has justices who are members of either or both the county council and the borough council, as well as one co-opted member of the local education executive, and a member of the sessions half of the standing joint committee. When it is realized that both the county and the borough council are represented on fourteen other bodies the full implications of s. 3 are brought home, for

if any of those bodies bring proceedings—not all have the power, happily—it will be necessary to consider the terms of their constitutions to see if the councillors are prevented from acting. The proportion of councillors on the writer's large bench is smaller than usual; in some areas the question of who may act must be a real headache.

At this stage it may be as well to summarize the position as the writer sees it:

In county council matters no justice who is a county councillor or alderman can act as a justice.

In county district matters no justice who is a member of the council of a county district concerned can act as a justice.

In matters affecting any joint board, committee, authority, or combined body, no county councillor or alderman, or member of a county district council, which forms part of, is a member of, or is represented on, the board, committee, authority or combined body, may act as a justice.

These disabilities are imposed by the Act, but in addition there is the question of the co-opted or nominated member, who is not a councillor or alderman, and who is a member of a joint board, committee, authority or combined body. This is a matter of opinion, but it is possible that he would be well-advised not to act on matters affecting the particular joint board, committee, authority or combined body, although he would be acting with propriety in sitting on other matters affecting a body which forms part of, is a member of, or is represented, on his particular joint board, and so on.

There is the further possibility that whilst a co-opted member of a local education executive might under the provisions of the previous paragraph decide not to sit in education matters, the member of a county council must not do so, nor must he sit in any matters affecting a local council which nominates members of the executive, whilst similarly the local council member may be debarred from county council matters. It cannot be over-stressed that this is put forward as an arguable case, albeit a strong case, and not as a final axiom.

Turning from these general principles and arguments to particular cases, the question of adoption proceedings falls to be considered. On January 12, 1950, a Home Office circular, No. 7/1950, was sent to justices' clerks, enclosing a lengthy memorandum prepared by the Lord Chancellor's department, on the Adoption of Children Act, 1949, the Adoption of Children (County Court) Rules, 1949, and the Adoption of Children (Summary Jurisdiction) Rules, 1949. The Adoption Act, 1950, a codifying Act, would not appear to alter the principles set out in this memorandum, and certainly does not effect those recommendations in paras. 64 and 65 which have resulted in the local authority "normally acting through the children's officer" being appointed guardian *ad litem* in cases where the authority has not "arranged or participated in arranging, the adoption." Moreover, the "welfare authority" is to be served with notice of the hearing and is entitled to make representations thereon: Adoption of Children (Summary Jurisdiction) Rules, *supra*. The combined effect of the adoption Acts and rules, together with the Children Act, 1948, is to make the local authority the welfare authority, so that it follows that this body, either a county or county borough council, will be intimately concerned with adoption proceedings either as guardian *ad litem* or welfare authority, or both. The question arises whether such proceedings can be said to be "against" the authority. Undoubtedly as welfare authority they are respondents to the proceedings, and as guardian *ad litem* they represent, and stand in the shoes of, the infant, whose interests are vitally affected. It is quite clear that in a matter of such importance to the child as its adoption, natural justice demands an investigation by a court untrammelled by preconceived ideas, such as might arise from a councillor's unconscious predilection to the views of an official of his own council. It is the writer's opinion that it is not unlikely that were the point to be taken it would be held that on a strict interpretation of s. 3 of the Act of 1949, a member of a local authority which had acted as guardian *ad litem* or welfare authority in an adoption case ought not to act in such case.

Finally, attention is drawn to the abolition by the Justices of the Peace Act, 1949, s. 6, of the privileged position formerly enjoyed by justices who are members of fishery boards established under the Salmon and Freshwater Fisheries Act, 1923, whilst s. 5 of the 1939 Act provides that no act or appointment shall be invalidated *by reason only*—the italics are the writer's—of the disqualification or lack of qualification of any justice. It may seem that this robs the disqualifying sections of their sting; it is to be hoped that it will be regarded only as the remedy for the inevitable innocent mistake. In Home Office circular 78/1950, which dealt with those sections of the Justices of the Peace Act, 1949, which came into force on June 1, 1950, the Home Secretary has this to say on the subject: "In the Secretary of State's view, moreover, it would be improper for a justice, who is aware when a case comes before him that he is disqualified from sitting to hear the case by reason of . . . s. 3, to rely on s. 5 as enabling him to sit thereon." The writer will go even further: it would be a denial of that part of his judicial oath which obliges him to do right to all manner of people after the Laws and Usages of the Realm. F.G.H.

A MAGISTRATES' COURT IN SIERRA LEONE

By F. W. KEDDIE

It was an interesting experience for the writer recently to sit by the side of the presiding African magistrate on the bench of a magistrates' court in the Protectorate of Sierra Leone; it is hoped that these notes of the proceedings may also prove interesting to magistrates and others interested in the working of the courts.

These courts (similar to the African courts presided over by the Paramount Chief of the district) have a status equal to that of a British magistrates' court and until recently were all presided over by district commissioners but the growing demands on the time of the D.C.'s have made it necessary to appoint a stipendiary; the gentleman selected being a native of Sierra Leone, trained and called to the Bar in England; he presides regularly over four of the magistrates' courts in the Protectorate and may be required to preside over any of the others for cases of special importance; he has sometimes a strenuous task in achieving punctuality, for to travel from one to another of the courts in his circuit means sometimes a journey of up to 100 miles over roads which in wet weather may become almost impassable, and frequently after the court has finished he has to start the journey for the next day's court.

The courthouse or "Barri" described below is in a fair-sized native town and is beautifully situated in sylvan surroundings, the bush has been cleared, leaving only trees and grass, and so, placed as it is on a vast lawn surrounded by trees and

thickets, the courthouse might well be imagined to be in English parkland.

The building has no sides save for a low concrete wall with entrances each side; these walls surround a concrete floor about 70ft. by 30ft. with a dais at one end, and from them rise pillars to support the high pitched roof with very wide eaves to carry off the water when it rains, and rain it does sometimes for falls of two inches in the hour are by no means uncommon in the wet season.

The walls do duty also as seating accommodation for the Africans, and behind them stand others and, in a knot by themselves, Syrians, and an occasional European; further seating for the Africans is provided by benches at the rear half of the court, and in front of these a space is kept clear for the portable dock and witness box, both simply constructed of wood railing; the clerk and his assistant were at a table below the dais and on the left and at right angles to it was a table at which sat the local police officer with some of his subordinates, called court messengers.

As to dress, the magistrate, the writer and the clerk were the only ones out of perhaps 150 present who wore coats and ties, and as far as could be seen also the only ones except the inspector and Syrians, who were not barefoot; respect or a desire to show off ensured that all natives wore their best clothes, a clean pair of shorts, generally khaki, and an open neck shirt, generally white, showed up neat and businesslike against the coal black skin, the thick lips and woolly hair; the inspector was in short-sleeved khaki service tunic, khaki shorts, khaki stockings, brown shoes, and a most infectious grin, while the court messengers, tall men as a rule, had navy blue tunics and shorts and red pork-pie hats.

On the dais adjoining the Bench and facing the court sat a court messenger: his duties, to keep order and to act as interpreter for one of the native tongues, and sitting on the table in front of us an old familiar friend: *Stone*, amidst three or four other law books.

Proceedings started by the magistrate calling for the first defendant to be put up, and in all the later proceedings it was he who ruled the court, examined witnesses where necessary, kept notes of the evidence, verdict and sentence, in fact did all those things which a chairman of the bench should do in England and that a clerk does do. After the magistrate had read out the charge the first question had to be "Do you speak English?" to which the defendant invariably replied with a puzzled shake of the head, and the services of an interpreter for one of the dozen or so native languages had to be used until it was quite apparent that the defendant as well as all those present were well acquainted with pidgin English, which is fast becoming the *lingua franca* of Sierra Leone.

Charges had been drawn up by the police, some of them badly, and had to be amended, with, in one case, an accused obtaining his discharge in consequence of an error in drafting, but it is understood that this state of affairs is rapidly improving. Syrian witnesses were literate and good, but it was frequently a matter of labour and of infinite patience to elicit from the natives evidence that was relevant.

Offences were mainly larceny and breaches of the traffic regulations, and to English ears the sentences appeared somewhat severe, but it was learnt afterwards that, in a land where there was a multitude of vehicles no longer able to obtain a road-worthy certificate, and where burglar guards are, as a matter of course, fitted to houses, punishment needed to be salutary; sentences generally had an option of fine or imprisonment and the offenders on their way to the nearby lock-up all appeared to be cheerful and happy: prison conditions in Sierra Leone must be rather attractive!!

PROCEEDINGS TO ENFORCE PLANNING CONTROL

By G. H. C. VAUGHAN, B.A. (Cantab.); *Barrister-at-law.*

Two sections of the Town and Country Planning Act, 1947, which involve proceedings in courts of summary jurisdiction, are s. 23 (which is entitled "Enforcement of planning control") and s. 24 ("Supplementary provisions as to enforcement"). The key word in both these provisions is the word "development"—for it is only if development has been carried out without permission of the local planning authority, or if, although permission was given, it was given subject to conditions and those conditions have not, in the opinion of the authority, been complied with that it has power to serve an enforcement notice.

Briefly, "development" can be said to comprise (*a*) the carrying out of any *operations* in, or over or under land, and (*b*) the taking of any *material change* in the use of land. Obviously the words italicized are capable of many different interpretations and no doubt they will in due course receive definition in the courts. Certain types of activity, which it is not necessary to detail here, which would at first sight be thought to constitute development, are expressly stated in the Act not to be development. Furthermore, the Use Classes Order, 1948, declares certain changes of use not to be development. Sub-section (2) of s. 12 of the Act also declares certain operations and uses of land not to be development for the purposes of the Act, so that no question of planning enforcement can arise in relation to them. Subsection (3) of the same section expressly declares the use of a dwellinghouse as two or more flats, and the deposit of waste material on land, to be development. Again, the use of any external part of a building for the purposes of advertisement, which is not normally used for that purpose, is declared to be a "material change of use" and hence development, by the same section. Finally, s. 12 declares three types of use to be exempted from the requirement of planning permission; and obviously where no permission is necessary no question of planning enforcement can arise. A similar result follows from the mass granting of permission for certain types of development specified in the Town and Country Planning (General Development) Order, 1948. This last order has recently been extended by a 1950 order, bearing the same title. Since it is the necessity for permission which gives jurisdiction to courts of summary jurisdiction to hear appeals against enforcement notices, the fact that a particular piece of development does not require the payment of a development charge is irrelevant—provided permission was necessary.

It is to be noted that though development may have been carried out without permission enforcement proceedings are not automatic, for s. 23 leaves it to the local planning authority to decide whether they think it expedient "having regard to the provisions of the development plan and to any other material considerations" to take proceedings for enforcement.

There are two types of cases which are brought within the enforcement provisions of s. 23 even though they in fact relate, strictly speaking, to earlier town and country planning provisions.

By s. 75 enforcement proceedings can be taken under s. 23 in respect of (*a*) works existing on land on the "appointed day" (which was July 1, 1948), which were carried out in contravention of the planning control existing on that day, and (*b*) the use of land begun in contravention of such previous planning control.

The enforcement notice which is served must specify the period of time upon the expiry of which it will become effective—and this must not be less than twenty-eight days from the date on which the notice was served. It is during this period that "any person on whom an enforcement notice" is served may appeal to the magistrates. Section 23 also requires that the notice be served upon both the owner and the occupier of the land or premises concerned, and hence the appellants may be either or both of these persons. By the interpretation section of the Act, s. 119, "owner" in this context means a person other than a mortgagee not in possession, who whether in his own right or as trustee or agent for any other person is entitled to receive the rack-rent of the land, or, where the land is not let at a rack-rent, would be so entitled if it were so let," *i.e.*, this means that a lessee is owner for these purposes.

The appeal will lie to the court of summary jurisdiction for the division or place within which the land to which the enforcement notice relates is situated. The notice of appeal will take the form of complaint for an order (Summary Jurisdiction Rules, 1915, rule 58), and the grounds of appeal may be as follows: (1) that the operation complained of is not development (here it is noteworthy that there may have already been an appeal to the Minister under s. 17 on this very point, but his decision thereon does not bind the magistrates' court in any way); (2) that planning permission was in fact granted for the development; (3) that although the operation was development, it was exempt from the requirement of planning permission; (4) that the condition or conditions subject to which permission was granted have in fact been complied with; (5) that the requirements of the enforcement notice exceed what is necessary in order to comply with the conditions attached to the planning permission; (6) that the requirements of the enforcement notice exceed what is necessary in order to restore the land to the condition in which it was before the development which is complained of took place; (7) that the works or the use mentioned in the notice were not commenced in contravention of previous planning control; (8) that the time-limit of four years from the date of the development being carried out had expired.

The second ground would involve argument based upon the Town and Country Planning (General Development) Order, which grants mass permission for certain types of development, as to whether the developments come within one of the types specified therein. In the case of grounds (5) and (6) the magistrates have power to vary the requirements specified in the enforcement notice if they think them unnecessary or excessive. In the other cases they have no power to vary and must allow the notice to stand unless satisfied by the appellant that he has established his grounds of appeal.

The question which party is to open the case is one which is likely to give rise to argument in these appeals. Strictly speaking, the appellant should open the case stating the development which he has carried out, or if he denies that it is development, the actual operations which he has performed, and the local planning authority should then state their case, *e.g.*, why they consider that the operation or use is development, or is not "permitted" development under the General Development Order, or in what respect they consider that the conditions imposed have not been complied with, or why they think the action specified in the notice is necessary in order to restore the land to the condition in which it was before the use or the operations commenced. This form of procedure obviously places the appellant in a very difficult position inasmuch as he has to wait until after his case is concluded to know what the planning authority's arguments are, and it is then too late for him to answer them. It is submitted, therefore, that a legitimate and preferable procedure would be for the authority to present its case first and for the appellant to reply thereto.

An appeal lies on these matters from the magistrates' decision to quarter sessions. That decision is final unless a case be stated for the opinion of the High Court on a point of law.

Coming to the "Supplementary provisions as to enforcement" contained in s. 24, these are more complicated than the provisions of s. 23 and require careful reading. First, the section enables an authority where any steps required in an enforcement notice have not been complied with (other than a requirement that a particular use be discontinued—see below further as to this point), and no appeal has been lodged within the time allowed, to enter the land, take the required steps, and recover the reasonable costs of so doing as a simple contract debt in any court of competent jurisdiction (*i.e.*, up to £200 in the county court and higher sums in the High Court). It is open to this court to decide what are the "reasonable costs" incurred by an authority in carrying out its enforcement notice. It is important to notice that these costs can be recovered from "the person who is then the owner of the land" (owner, of course, being used in the extended sense given above), who may or may not be the person responsible for the contravention of planning control. If, however, he was not the person served with the enforcement notice and therefore had no opportunity of appealing against the notice under s. 23, then he can apparently dispute the civil proceedings upon any of the grounds which would have been available to him on an appeal under s. 23. He could not, however, argue that the use or operation was not development if this point had already been decided the other way by the Minister on an appeal under s. 17, for such decision by the Minister is binding, "except on an appeal to the court," and the debt-collecting proceedings under s. 24 (1) are not "an appeal to the court."

Although the person at present "owning" the land is liable he can recover any costs which he is obliged to pay from the person by whom the development was actually carried out, for by s. 24 (2) he is deemed to have incurred such expense "for the use and at the request of" such person.

Where the offending development was a change of use and not an operation in, on, under, or over land, then s. 24 (3) enables the local planning authority—not to stop the use by main force, for this would be inconvenient and highly undesirable—but to prosecute for an offence created by the section, the maximum penalties being £50 and £20 per day for every day on which the offence continues after conviction. This subsection also makes it an offence similarly punishable, to fail to comply with conditions imposed by the authority in respect of the use of land or of any operations thereon. A prosecutor under this section would have to prove (*a*) that an enforcement notice had been served; (*b*) that it was in due form, etc.; (*c*) that the notice had not been complied with.

NOTICE

The annual general meeting of the Commons, Open Spaces and Footpaths Preservation Society will be held at the society's offices, 71, Ecclesion Square, Belgrave Road, Westminster, S.W.1, on Wednesday, October 25, at 2.30 *p.m.*, to receive the statement of accounts and report for the year 1949, and to elect officers and general committee. The chair will be taken by the president of the society, Sir Arthur Hobhouse, M.A., J.P., and it is hoped that all members who can attend will do so.

THE AMBULANCE SERVICES

The Third Report from the Select Committee on Estimates in the 1950 Session deals with a detailed inquiry into the estimated expenditure on the Ambulance Services. They had evidence from the Ministry of Health and the Department of Health for Scotland; from three local health authorities, namely the county councils of Lancashire and of Huntingdonshire and the Bradford County Borough Council, and from Sir Allen Daley, K.H.P., Medical Officer of Health, London County Council, who gave evidence in a personal capacity.

Some parts of the report received considerable prominence in the daily press, but we are sure that the report as a whole will be of special interest to local health authorities who, in their responsibility for the service, are becoming increasingly concerned at the cost, which is estimated in the current financial year at £7,986,000, fifty *per cent.* of which is repaid from the National Exchequer.

Before the National Health Service came into operation, there was no statutory duty on any public authority to provide a full ambulance service. During the war, hospitals relied largely on the volunteer car pool, organized for civil defence and other essential purposes by the Women's Voluntary Services. The pool was brought to an end in 1945 and was succeeded, for the transport of hospital patients, by the Hospital Car Service organized jointly by the St. John Ambulance Brigade, the British Red Cross Society and the Women's Voluntary Services.

As was admitted by the Ministry of Health witnesses, the size of the service now required depends on the nature and size of the need, which are beyond the local health authority's control. The Ministry have, however, always made it clear that local health authorities are entitled to satisfy themselves in each case that there is a need for special transport and have indicated that although emergency calls must be answered immediately, without question, in other cases transport should normally be provided only where a doctor's or hospital voucher says it is necessary. There has, undoubtedly been laxity in the past in calling upon the service to provide sitting-case cars as shown by the examples of cases reported to the Ministry and which are set out in an annexe to the report.

Sir Allen Daley, in his evidence, also agreed that it is probable that there is some abuse of the service, particularly of the hospital car service, and that transport is ordered for some who could well get to hospital and back by public transport. The cost in London, before the operation of the National Health Service Act, was borne by the voluntary hospitals participating in the scheme and amounted to about £10,000 a year. It is now about £50,000 a year. Sir Allen Daley emphasized, however, that the London Ambulance Service can have little control over the demand for the service by hospital authorities as it is their officers who decide whether transport is necessary. In his view, the fact that it is a free service has undoubtedly resulted in some cases in the irresponsible ordering of ambulances and cars. He agreed that free choice of hospital is important, but it can be overdone and, in his opinion, it certainly is if a patient or his doctor, selects a distant hospital and the medical staff recommends visits to the physiotherapy department three times a week for a long period when there is a perfectly good hospital or department quite near to where the patient lives. Similarly patients have had to be conveyed regularly long distances for many visits to receive radio-therapy because the radio-therapy department of that hospital was forty-five miles away. Again, he was not sure that it is a proper charge on the public purse for patients to come, at the public expense, long distances, sometimes 100 or 200 miles, for treatment in London which can be adequately provided much nearer home.

The Select Committee express the view in their report that as the Ministry of Health are directly responsible for the hospitals through the Regional Boards and Managements Committees, and they are in contractual relationship with the doctors through the Executive Councils, they are also responsible for controlling the demand for the ambulance service. It is noted that the Ministry of Health have issued circulars urging the most economical use of the service, but no specific instructions have been issued to hospitals, or doctors, regarding the use of the service. The evidence received by the Select Committee showed that the Ministry of Health are paying money to some local health authorities for ambulance services in circumstances where other local authorities feel that they should not be provided and where they do not provide them. An invidious duty is thus being imposed on doctors, hospital officers and county medical officers to refuse requests by patients for an ambulance or car in one area when they may be well aware that the request will be granted in a neighbouring area. The committee recommend, therefore, that the Ministry of Health should co-operate more in seeing that this demand is more standardized and equitable as between one local health authority and another. They also suggest that the Ministry of Health should issue a circular containing rules for the use of ambulances.

One of the more striking differences in the use of ambulances and sitting-case cars in different areas is the authority required before an ambulance or car may be called out. In Lancashire, for example, ambulance drivers are instructed to carry no one (except in an emergency) not in possession of a medical certificate. This is also the rule in Kent. None of the other local health authorities which gave evidence requires a certificate before sending an ambulance. The London County Council makes it a general rule that hospitals rather than doctors should order ambulances. This rule was made after it had been found that ambulances had been ordered to carry patients to hospitals where no bed was available. Few local health authorities have such a rule, though the Select Committee consider it to be a wise one. They believe, moreover, that a rule that a medical certificate should be required, at any rate for a wide range of cases, would not cause too much administrative work. It is considered also that the increased burden placed on the service through having to carry out-patients requires examination. With regard to the use of the hospital car service the committee think that the greater control which is possible by local authorities over their own vehicles renders the use of such vehicles preferable in many areas in the interests of economy.

It is Government policy that expenditure on the National Health Service as a whole must not increase at the present time. In Scotland, the Department of Health has fixed an upper limit of 600 for the number of ambulances and they hope to be able to restrict demands so that this number will be adequate. It is clear that the general restriction on the Health Service must affect the ambulance service but it is important that any such restriction should not affect urgent cases. It seems to the Select Committee that unless the Ministry of Health take action on the lines recommended in their report, there is a very real danger that, in the words of one witness "the day will come when all our vehicles are engaged on trivial work which does not really matter very much, and some desperately urgent case will die because it has had to wait to go into hospital."

REVIEWS

Mews' Digest of English Case Law. Twenty-fifth Annual Supplement. Butterworth & Co. (Publishers) Ltd. Sweet & Maxwell, Ltd. Stevens & Sons, Ltd. Price 30s. net.

For many years *Mews' Digest* has kept a primary position among works of this kind, appearing in annual digests which have periodically been consolidated. Thus cases from early times up to the end of 1924 are now to be found digested in what has become the main work, in twenty-four volumes. Those from 1925 to 1935 are dealt with in Mews' Eleven Years' Digest; those from the end of 1935 to the end of 1945 in their Decennial Digest, and cases from 1946 onward in Annual Digests. The present volume contains the cases of 1949, with a consolidated table of cases digested since the end of 1945, and also a subject index to those years. The remainder of the work is on lines familiar to every lawyer. The cases are set out under alphabetical headings, and the head notes to the main report of each digested case have been used. The note of each case is printed with a full apparatus of references, for those who wish to look it up in the reports, and in most cases will not, in their own chambers or offices, have more than one or two series of these. There are cross references where necessary, from one noted case to another. The year 1949 has produced a large crop of cases under the heading "landlord and tenant." Many of these are under the sub-heading "Rent Restriction Acts" and "Furnished Houses (Rent Control) Act," but there are quite a number upon other branches of this voluminous subject. The lawyer consulted upon almost any branch of the law of landlord and tenant, who remembers that there has been a recent decision and wishes quickly to remind himself of its effect, can be sure of picking it up here without delay. The same can be said of "divorce and matrimonial causes," another topic where the activity of Parliament seems to create an ever flowing stream of points calling for judicial settlement.

Income tax and surtax is another large title, where it is particularly important to the practitioner to have on hand, as he has here, means of referring quickly to the cases most recently decided. Negligence is now a main heading in its own right, and a good variety of points under that heading will be found. Practice and procedure is a matter upon which it is not always easy to find the latest information quickly, and here it is—including the practice notes under several sub-headings which have appeared in (1949) W.N. There is a larger number of cases upon rates and rating than we should, off hand, have thought. So one might go through the work, and find on every legal topic something useful. *Mews'* does not profess to cover so wide a field as the *English and Empire Digest*, and of course subscribers to the *All England Reports* will already have a good number of the cases readily accessible. But it does cover every series of reports, some of which are not within the purview of the ordinary legal practitioner, so that he will find the modest price of 30s. well expended, whatever be his own particular line of country.

Inventions, Patents and Monopoly. By P. Meinhardt. London: Stevens & Sons, Ltd. Price 30s. net.

This is the second edition of a work which we reviewed when first it came out, pointing out that the learned author had not been content merely to expound the statutes, but had given readers the benefit of his knowledge on some questions of policy. Since the first edition the law of patents and designs has been consolidated in the Act of 1949, and there have also been passed the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, and the Development of Inventions Act, 1948. The present edition has a foreword by Mr. James Mould, K.C. New legislation is dealt with in Part III of the book and of course the Patents Act, 1949, runs throughout the whole. The work is outside our own normal purview, but from time to time officers of local authorities do find themselves obliged to consider questions of patent law, and when they do will, so far as we are able to judge, be able to find in Mr. Meinhardt's work the guidance they will need.

An Outline of Scientific Criminology. By Nigel Morland. London: Cassell & Co., Ltd. Price 12s. 6d.

Mr. Morland is the author of previous works on crime and criminals and in "An outline of Scientific Criminology" he displays a keen insight and appreciation of the vast subject with which he deals. In the sense that he is an onlooker, being neither a scientist nor an investigator, he has observed most of the game with a high degree of penetrating examination and skill. But there is much more, because he dips deep into the classics on medical jurisprudence and forensic science in order to clothe the text with illustration and information.

Mr. Morland made acquaintance with men in many countries whose names are well known in the field of criminology: J. Edgar Hoover, Director of the Federal Bureau of Investigation in America, Dr. Locard of France, Superintendent H. Battley lately head of the Finger Print Branch, New Scotland Yard, and many others. More, he has studied their criminal problems and the modern methods employed in solving them.

The book will appeal to the man-in-the-street as well as the expert: whether judge, lawyer, policeman, medical man or lay magistrate. The technique of scientific investigation is presented in a simple, plain theme, and loses nothing from the professional investigator's point of view by its directness; rather by its clarity it renders the contents easily assimilated and digested.

Its value to the general reader is that the greatest contributor to the detection of crime everywhere is the man in the street. He is the victim of the offender, or the witness of the criminal act, and subsequently the dependent in the courts of justice. The book will stimulate his conception, both of what the modern criminal does, and how the scientist and police deal with the gossamer-like clues.

The opening chapter explains the origin and history of fingerprints; their practical use and how they are classified and compared, and the development of latent digital impressions. The identification of individuals is examined together with the subject of plastic surgery, scars and tattoo marks, bloodstains and occupational marks.

Forensic ballistics forms a chapter of considerable importance. Firearms of all types figure in crime, and the author describes the scientific procedure in relation to the proof offered to identify bullets fired from specific firearms. Bullets found at the scene of crime can be positively linked to the weapons from which they were fired.

Reviewing medical jurisprudence, the science concerned with the application of medical knowledge to certain branches of law, the author discusses signs of death, hypostasis and blood changes, rigor-mortis, wounds, bruises and injuries, suicides, insanity and other medico-legal problems.

On forensic chemistry, the chemistry applied to the solution of certain problems that arise in connexion with the administration of justice, Mr. Morland explains blood tests, spectroscopy, biochemical tests, clues on clothing, dust and dirt particles, counterfeit coining, footprints and tyre marks, fires, explosions and explosives and noxious gases.

The part of the book about documents and documentary evidence merits close attention. The chemical nature of paper is explained, as are marks on documents, watermarks, the classification of inks, examination of typescript and forgeries of cheques and stamps. The mysteries of secret writing are revealed and some good illustrations show the methods used in sending communications of this kind.

How the microscope and camera are used in scientific criminology is dealt with by the author, with the same satisfying literary technique. When Mr. Morland writes of instruments or processes, which might be somewhat unknown or obscure, he unfailingly explains in a few initial sentences what it all means. It is always comforting not to appear to be told in detail when one does not know; but delightful to be enlightened in language as if one had at least an understanding of the point in issue; that is what the author does so delicately.

The last chapter, "The application of Scientific Criminology" sums up the lessons of the book and shows within what limits science is practicable in investigation: the progress in other lands and in general adds concluding touches to phrases earlier discussed.

The book is readable, informative, well illustrated by pictures and cases, and altogether a valuable addition to criminological literature.

The Law of Sewers and Drains. By J. F. Garner. London: Shaw & Sons, Ltd. Price 25s. net.

This book of one hundred and sixty pages is described by the publishers as a detailed work on the law of sanitation under the Public Health Acts. While we are not sure that we agree with their note issued with the book, that the law relating to sewers and drains is one of the most obscure subjects on the statute book, we certainly think that it is much more obscure than it would be, if there were not so much case law and even old statute law to be remembered. Much of this has been preserved as embodying vested interests created by piecemeal and ill-considered local legislation; a strong Government with a clear majority in the House of Commons could consign a lot of it to limbo, with no great loss to anyone. The learned author's purpose has been to bring this complex mass into focus, and see what principles can be harmoniously set out. His results are presented in clear type with bold headings, and the book is therefore easier to follow, especially for the young practitioner, than some of the well known standard works covering the same ground. It has the advantage also of being completely up to date, so that (for example) in the part of the book where the pollution of rivers and watercourses is brought into relation with other branches of the law of sewerage the recommendations of the Central Water Advisory Committee have been

noticed. In addition to sewerage and drainage, and the pollution of watercourses, we find that the book deals with highway drains and sanitary conveniences for different types of building. For sanitary inspectors and their assistants, and indeed for junior solicitors who have to deal with these matters from day to day in the offices of local authorities, we can see a very useful field for the book.

The British Journal of Delinquency. Vol. I, No. 1. Published by the Institute for the Study and Treatment of Delinquency, and Balfiere, Tindall and Cox. Annual subscription 27s. 6d., post free, payable in advance; single copies 7s. 6d. net.

The literature of the science of criminology grows apace, but we think the publication of the first number of this new periodical may prove a landmark in its history. The journal is the official organ of the Institute for the Study and Treatment of Delinquency, and its editors, two of them medical men and one a lawyer, are well known to all who are interested in criminology; they are Dr. Edward Glover, Dr. Hermann Mannheim, and Dr. Emanuel Miller. The advisory board consists of a number of distinguished men and women.

The editorial announcement sets out the object as "to enable students of criminology to keep in touch with recent developments in the various branches of science concerned with the investigation, treatment and prevention of delinquency." It is pointed out that some of the best results have been obtained, and obtained quickly, by the efforts of a therapeutic group working in co-operation," in short the success of the I.S.T.D. has depended first and last on the efficiency of its team work." The journal will welcome opinions and contributions from the various types of worker in this field, and preference will be given to those dealing with research. It is hoped that it may prove internationally representative, for already there have been many contacts with and contributions from workers in other countries towards the literature on delinquency and criminology. This first number of this journal itself contains several articles of this kind.

It is satisfactory to note that writers will include some who hold official positions (this number contains an article by the principal medical officer of H. M. Prison, Wakefield) as well as by many who do not. It is of course important that those who deal with delinquents under detention should be heard, as well as those who observe and treat them in the open and possibly without their having come before any court.

This first issue of the Journal contains many interesting and thought provoking articles and a number of book reviews. Judging by this number, we feel confident that it will fulfil a useful purpose and provide a valuable forum for the discussion of problems from many angles. It deserves to be widely read.

Children as Citizens. By Margery Fry, J.P., LL.D., D.C.L. To be obtained from the offices of the National Children's Home and Orphanage, Highbury Park, London, N.5. Price 3s. 6d.

This little book is the Convocation Lecture for 1950. Everyone who has heard Miss Fry knows that, whatever her subject, whatever she says is always as entertaining as it is instructive, with never a dull moment. Always wise and kindly, she can yet criticize firmly, but always with good humour and without bitterness.

In this lecture, Miss Fry goes back to the days when children were mere chattels, when often they were condemned to die if they were an encumbrance, and when they had no rights of any kind. Ancient customs in many lands are described so as to show how completely the fate of small children was in the hands of their parents, even to the point of human sacrifices. So far as this country is concerned, it can at least be said that when law came into being it recognized that children had rights like those of older people, though it was a long time before this was much more than a theory. Today we recognize that children are the most important members of the community. That, as Miss Fry shrewdly points out, does not mean that each child is the most important person among his elders, and she is obviously anxious that children should never be encouraged in an attitude of self importance, but should rather be taught from an early age and by progressive stages, that as citizens they have responsibilities and duties.

From ancient history to twentieth century legislation the story of the treatment of children is traced, culminating in the Children Act, 1948, which Miss Fry describes as the second Charter of English Childhood. If children are to lead full and happy lives and become good citizens they need above all the love of individuals, and this is really the theme of the lecture. We hope it will be widely read. It is not only scholarly, it is full of that broad humanity and deep understanding which characterizes all Miss Fry's work.

Social Casework in Great Britain. Edited by Cherry Morris. London: Faber and Faber, Ltd. Price 12s. 6d. net.

By social case-work, various authorities, officials and other social workers seek to help individuals and families who are suffering from personal and social difficulties. In a welfare state much of this work is done by officials with statutory authority to intervene in the affairs of other people for their good, but there is still room for many other social workers occupying no official position. What has been realized of late is that this kind of work calls for systematic training of workers as well as good intentions and a sense of vocation. Some people fear that intensive training and study of theories may displace enthusiasm and sympathy with the result that the modern social worker will fail to achieve as much as did the old time worker who trusted to the light of nature and his experience of life.

The present volume, which takes the form of a symposium in which various writers deal with social case-work in different fields and from different standpoints, should go far to allay such fears. The need for a sense of vocation and of practical knowledge of people and their problems is well recognized but it is rightly claimed that specialized instruction and training are indispensable in dealing with the complexities of modern life. Thus the very first chapter begins: "The basis of all case-work is the natural human response of one individual to another in some need which he cannot meet alone" and in the next chapter we find: "... at the outset, therefore, it must be stated categorically that, however scientifically case-work may be practised and examined, it is still predominantly an art, and can only partly be taught. Without certain qualities of temperament and without intuition, the most highly trained and intelligent student can still remain a practitioner of very limited skill."

As for the editor and the writers who have combined to make up this book, each is well qualified by training and experience, and we have no doubt that such a book will prove of more service to social workers than one from the pen of a single writer. Many of our readers will find particular interest in the chapter on probation, contributed by Mr. W. G. Minn, formerly a probation officer in London, and now an inspector in the probation branch of the Home Office. Probation is a specialized branch of social work, differing in many respects from other kinds and therefore, subject to certain advantages and disadvantages. The probation officer has to work within certain time limits prescribed by statute and he may have to relinquish a case earlier than he would desire. On the other hand he has definite authority for his work and there are sanctions to be invoked in case of need. As his sphere of work becomes wider the need for training becomes clearer, and fortunately this is now amply provided for by the Home Office.

In a final chapter, Miss Eileen Younghusband sums up with complete impartiality as befits one who is not only a lecturer and a social worker, but also a magistrate. "Insight, judgment, the capacity to listen to the overtones in every conversation and the sympathy to make quick contacts are required of every social worker, but, so too, are common sense, the saving salt of humour, and a sense of proportion."

These Our Children. By Arthur Collis and Vera E. Poole. London: Gollancz. Price 8s. 6d.

Beginning where the Curtis Committee left off, the authors deal with the environment of those children who grow up not in institutions but in unsatisfactory homes of their own. They have the experience and insight necessary to see, and the ability to describe, the lives of people who, to the great majority of readers, will seem as remote as the inhabitants of another planet. To juvenile court magistrates and some others the case histories will seem familiar—the grim particulars of dirt, disease, poverty and mental and spiritual inadequacy, culminating in some cases in crime, in others in degradation, despair or death. But even for those who hear such stories in court, the book brings new light: the authors have met face to face the things which magistrates see mirrored in reports and oral evidence, and they are able to transmit their own more sharply defined vision to the reader.

The authors are at their best in this objective reporting: even those of their readers who have too much experience to be shocked by the facts are likely to be disturbed by the impression which is given of themselves as seen from the other end of the telescope—the juvenile court—as some remote, impersonal agency, doing justice which sometimes succours and sometimes casts down: officials of all kinds as cogs in a machine may help or hinder but which can never be diverted, accelerated or retarded by the individual will.

In its judgments the book may be found less acceptable—specialists in various fields (such as education, clubs, or courts) will no doubt complain that they are vague or immature or platitudinous: nevertheless they must be allowed their significance in that they were formed inside the ring which circumscribes the "submerged tenth" of our society. Of approved schools, for instance, it is said that some are too sectarian in character and give a narrow outlook on life, while others remain too isolated from local community life: a wider variety of schools is called for. The success of probation is said to rest largely on the quality of the relationship between the probation

officer and the probationer, and smaller case loads are advocated to this end. In education the familiar plea is made for smaller classes, and the authors envisage a much closer relationship between the schools and child welfare services.

No panacea is claimed, nor is any combination of remedies regarded as the final answer to the problem: but the book will leave most readers in little doubt that its authors have seen the problem clearly and pointed out some obvious and urgent steps to its solution. In so doing they have done good service which will be wasted only if those who should pay attention to it (and that means nearly all of us) pass it by as just another book on problem families.

Housing Administration. Supplement to Third Edition. By Stewart Swift. London: Butterworth & Co. (Publishers) Ltd. Price 9s. 6d. net.

The work upon *Housing Administration* by Mr. Stewart Swift, chief sanitary inspector of the City of Oxford, has since its first appearance before the war been a standard work for practical use. Although not so complete for a lawyer's purposes as *Hill's Complete Law of Housing*, it fully serves the purpose of a textbook for sanitary inspectors and others immediately concerned in day to day administration. The third edition came out in 1947, which was a time of transition in this as in other fields. Although we are not yet through that transition, a sort of normality has returned, despite the continuance of controls and scarcities, and in 1949 there were two statutes bearing upon the subject. The Housing Act, 1949, gives further facilities for improving existing accommodation, and the Prevention of Damage by Pests Act, 1949, makes substantial changes in the procedure which had been established by the Rats and Mice Destruction Act, 1919, and then pulled about a good deal by emergency legislation. The present supplement is therefore important, in that it tells the official what shape has now been taken by the Acts he is administering. The supplement by itself is priced at 9*s.* 6*d.*, with the moderate charge of 3*d.* if sent by post, and the main work and supplement can be obtained for 37*s.* 6*d.* net.

MISCELLANEOUS INFORMATION

ALLOCATION OF NATIONAL HEALTH SERVICE PENSION

A revised explanatory memorandum (Booklet A.L.), issued by the Ministry of Health, gives further details, illustrative examples and tables prepared by the Government Actuary with regard to surrender (or allocation) by an officer of part of his (or her) pension or annual injury allowance in return for certain benefits to the wife (or husband) or a dependent on the death of the officer. The memorandum is that mentioned in para. 26 of the Ministry's blue-covered booklet (revised 1950) explaining the superannuation scheme set out in the National Health Service (Superannuation) Regulations, 1950 (S.I. 1950, No. 497).

Booklet A.L. deals with the option to allocate conferred by r. 11, subject to conditions laid down in the first schedule, of the regulations. A right to allocate in favour of a beneficiary, who may be a dependent not necessarily a relative, arises (*a*) on retirement, or (*b*) at pensionable age, if the officer does not then retire, or earlier if he has become entitled to retire on a 40/80ths pension. Pensionable age is normally sixty-five, but sixty for a female nurse and certain others, and may be later than sixty-five in the case of a practitioner in the general medical or dental service. Two copies of a form on which an officer may notify his desire to make an allocation will be supplied by his employing authority when he becomes eligible to do so. Not more than one-third of a pension or injury allowance may be allocated, but the allocation must be sufficient to provide the beneficiary with a pension at least equal to one-quarter of the pension or allowance remaining to the officer after allocation. An important condition relates to the health of an officer; before an allocation is permitted a registered medical practitioner nominated by the Minister of Health must state "whether, in his opinion, the person is in good health, regard being had to his age."

One illustration given by the Ministry is of a male officer, aged sixty-five, with a pension of £211 14*s.*, making an allocation to secure for his wife, aged fifty-nine, a pension of about £100, if she survives him, as well as any widow's pension to which she may be entitled under the regulations. Tracing the age of the beneficiary down the left-hand column of the appropriate table and then moving across into the column under the officer's age, shows that each £1 of his pension allocated by him would secure for his widow a pension of £1 15*s.* 7*d.* Division of £100 by £1 15*s.* 7*d.* shows that the nearest exact number of pounds to yield about £100 is £56 yielding £99 12*s.* 8*d.* Therefore, surrender of £56 would provide for an officer's pension of £155 14*s.* (full amount of £211 14*s.*, less £56 allocation) and a wife's pension after the officer's death, if the officer dies first, of £99 12*s.* 8*d.*

TRAINING FOR COLONIAL LOCAL GOVERNMENT

It was some six years ago that the Oxford City Council agreed to a suggestion supported by the Colonial Office and the Ministry of Health that Lagos Town Council should, at its own expense, send two Nigerian youths to Oxford, one to be articled to the town clerk (Mr. Harry Plowman) with a view to qualifying as a solicitor with experience in municipal law and practice, and the other to be trained by the city treasurer (Mr. F. M. Walker) in municipal accounting, with the intention that, when they were qualified, they should return to Lagos, and eventually take up major appointments with Lagos Town Council.

Mr. D. M. O. Akinbiyi, who was articled to the town clerk in 1944, has now qualified as a solicitor and has returned to Lagos to take up an appointment in the town clerk's office there, and the second student, Mr. J. C. O. Coker, has practically completed his training and will be returning to Lagos shortly.

Oxford Council has received a resolution from Lagos Council recording its sincere gratitude and thanks to the Mayor, aldermen and citizens of Oxford for their kindness in fostering the development of local government in Lagos by granting such excellent facilities for studying and training. Thanks have been expressed particularly to the town clerk and the city treasurer for their kindness in making the students' stay in Oxford so enjoyable and successful.

ROAD ACCIDENTS—JUNE, 1950

The return of the number of persons reported to have died or to have been injured as a result of road accidents in Great Britain during the month of June, 1950, is as follows:—

Classification of persons	Total		
	Died	Injured	
		Seriously	Slightly
Pedestrians			
(i) under fifteen	73	507	1,756
(ii) fifteen and over	90	606	1,653
Pedal cyclists			
(i) under fifteen	13	301	1,074
(ii) fifteen and over	66	970	3,246
Motor cyclists	108	1,040	2,045
Drivers	31	330	1,124
Passengers (sidecar or pillion)			
(i) under fifteen	—	17	61
(ii) fifteen and over	16	283	689
Passengers (other vehicles)			
(i) under fifteen	9	89	474
(ii) fifteen and over	42	614	2,604
All persons 1950	448	4,757	14,726
1949	399	3,923	11,760

BEFORE THE JUSTICES

Who's the chap who sits below them,
Passing papers to and fro them,
Showing things he wants to show them?
You remark.

He's the Power behind the Throne,
He's the man who knows his *Stone*,
He's the way the wind has blown.
He's the Clerk.

J.P.C.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

NATIONAL INSURANCE POINT

In "Notes of the Week" of the issue of your journal dated September 16, 1950, you have referred, under the heading "National Insurance Act point" to the provisions of reg. 2 (1) and 6 of the National Insurance (Determination of Claims and Questions) Regulation, 1948. If I understand the last paragraph of the note correctly, the point of the criticism there expressed is that reg. 2 (1) should have made it clear that a question whether "a person was or was not an employed person" under the National Insurance Act is a question which should be determined by the Minister.

May I, with respect, point out that by reg. 2 (1) *(c)* of the regulations to which I have referred, one of the three classes of questions which fall to be determined by the Minister is "any question as to the class of insured persons in which a person is to be included"; that is to say, any question whether any person is an employed person, a self employed person or a non-employed person within the meaning of s. 1 (2) of the Act.

Yours faithfully,

G. H. BRINKWORTH.

Solicitor's Office,
Ministry of National Insurance,
6, Carlton House Terrace, S.W.1.

[We are grateful to our correspondent and we agree that reg. 2 (1) *(c)* is the appropriate one. To decide the class of insured person in which a person is to be included automatically involves deciding whether he is an employed person, and this in turn would appear to mean deciding whether on a particular occasion he was employed by a particular person.

We confess that we were expecting to find a more direct reference to the question of employment on the lines of the Unemployment Insurance Act, 1935, s. 4 (1) referred to in our Note of the Week.—*Ed., J.P. & L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"TAKE IT FROM HERE"

I am prompted by the article in your issue of September 9 to send you notes on the Adoption of Children Act which I issued to my justices shortly after the 1949 Act came into operation. You will observe that I then raised many of the matters which are referred to in the article. Since that time one serious difficulty under the new Act and Rules has occurred before my justices. Applicants had applied that their identity be kept secret and notice was given to the father of the two children in the usual way. The father replied saying that he had changed his mind and now did not want to consent to the adoption and wanted to appear before the justices. According to the rules he ought not to meet the applicants but I wonder what the applicants would have said if the justices had interviewed the father and had decided not to grant an adoption without giving the applicants for adoption an opportunity of being present and questioning the father as to his bona fides. I resolved the matter by suggesting to the applicants that they be represented by a solicitor and that that solicitor should be present whilst the father was being interviewed. This was done and in fact the justices upheld the objection of the father and ultimately made no adoption order. The applicants were terribly upset as they had had the two children for many months but at any rate they could not say that they have not had an opportunity of questioning the father and his reasons for changing his mind.

I was very pleased indeed to observe a recent answer to a question in the J.P. upholding the court's right to have proper evidence of identity. Surely this is far more vital than the number of beds, bedrooms or blankets in the applicants' home.

Yours faithfully,

ALBERT PLATT.

Justices' Clerk's Office,
1, Wellington Street,
Ashton-under-Lyne.

PERSONALIA

APPOINTMENTS

Mr. A. H. Hargrave, who has just completed the Home Office training course, has been appointed a probation officer in the Middlesex combined probation area.

Mr. Thomas Foord, A.C.I.S., L.A.M.T.P.I., assistant solicitor to the borough of Epsom and Ewell, has been appointed assistant solicitor to the Birmingham corporation. Mr. Foord is thirty years of age and was admitted a solicitor in 1949 after serving his articles with the town clerk of Epsom. During the war he served in the Royal Navy as a lieutenant, R.N.V.R.

Mr. A. Bleasby of Huddersfield has been appointed assistant solicitor to the borough of Kettering in succession to Mr. G. D. Jones who has taken up an appointment with the Hayes and Harlington urban district council. Mr. Bleasby was articled to the town clerk of Barnsley.

Mr. J. G. Cook, F.R.I.C.S., F.A.I., deputy Treasury Valuer, has been appointed Treasury Valuer in the place of Mr. G. F. H. Wraight, C.B.E., M.C., F.R.I.C.S., who retires this month.

NOTICES

The next court of quarter sessions for the borough of Stamford will be held on Wednesday, October 25, 1950, at 11.30 *a.m.*

The next court of quarter sessions for the borough of Bridgwater will be held at the Court House, Northgate, Bridgwater, on Friday, November 3, 1950, at 10.30 *a.m.*

NEW COMMISSIONS

CORNWALL COUNTY

Mrs. Kathleen Mary Alford, Kircullen, Jacobstow.
Richard Ronald John Copeland, Trelissick, Feock.
John Richard Hardern, Old Town, St. Mary's, Isles of Scilly.
Eric Gordon Lilley, The Moorings, Goran Haven.
Norman Mutton, Gwavas, St. Tudy.
Mrs. Eve Ellen Osborne, The Palms, Unwin Road, Torpoint.
Commander John Malcolm Rodgers, D.S.O., Treworlas, Ocean View Road, Bude.
Mrs. Vera Ellaline Tamblyn, North Sillaton, Saltash.
Mrs. Elizabeth Violet Townsend, Fieldsway, Tregenna Lane, Camborne.
Cecil Bridgeman Watts, Watermill, St. Mary's, Isles of Scilly.
William Charles Wooders, 48, North Street, Tywardreath.

DURHAM COUNTY

Robert Balmer, 28, Hargill Road, Howden-le-Wear, Bishop Auckland.
Mrs. Jane Annie Bell, 19, Industrial Street, Pelton, Chester-le-Street.
Mrs. Charlotte Mary Bowman, 21, Galgate, Barnard Castle, Co. Durham.
Frank Featherstone Collingwood, Hollin Hill Farm, Hamsterley, Bishop Auckland.
Mrs. Ada Davies, 70, Campbell Park Road, Hebburn, Co. Durham.
Dr. Jessie Lingard Dixon, Laurel Hill, Horden, Co. Durham.
Octavius Evitts, 1, Oxford Terrace, High Clarence, via Middlesboro.
Francis Wilfrid Fry, The Old Vicarage, Monk Hesleden, West Hartlepool.
Hames Wadham Grant, Northolme, Whitburn, Co. Durham.
Anthony Green, Woodside, Witton Park, Co. Durham.
John Elliott McCutcheon, 2, Ambleside Avenue, Seaham, Co. Durham.
Mrs. Rena Mohon, Danesfield, The Briary, Shotley Bridge.
Mrs. Elizabeth Pattison, 42, Ernest Street, Pelton, Co. Durham.
Mrs. Rita Helen Phillips, B.E.M., 30, Crooks Barn Lane, Norton, Stockton-on-Tees.
Mrs. Catherine Reay, Clarence House, Bywell Road, Cleadon, Near Sunderland, Co. Durham.
Mrs. Mary Isabella Robinson, 64, Dalton Avenue, Deneside, Seaham, Co. Durham.
Thomas Swinburne, 63, Hutton Avenue, West Hartlepool.
Thomas Thompson, 4, Bellegrave Terrace, Felling, Gateshead, 10.
Robert Twitty, 57, Fifth Street, Horden, Co. Durham.
William Thomas Wilson, 5, West Terrace, Boldon Colliery, Co. Durham.
John George Winn, 2, Tyzack Street, Emondsley.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—**Bastardy**—*Poor Law Amendment Act, 1844, s. 5—Appointment after death of mother—Is order under s. 3, Affiliation Orders Act, 1914, necessary as well?*

My justices recently made an order under s. 5 of the Poor Law Amendment Act, 1844, giving the custody of an illegitimate child of a deceased woman to her sister. The putative father, who is voluntarily paying sums higher than officially ordered under a bastardy order, was informed of the application and was in favour of same. Do you consider it necessary for a further application to be made by the custodian on complaint for the original bastardy order to be varied to the effect that payments thereunder shall be made to the sister (Affiliation Orders Act, 1914, s. 3), or is it sufficient in law from the point of view of enforcement to leave the matter as it stands?

JUST.

Answer.

By s. 5 the person appointed thereunder is empowered to make application to recover all payments becoming due in the same manner as the mother could have done. No application under s. 3 of the 1914 Act is necessary.

2.—**Children and Young Persons**—*Contribution order with fit person order—Variation or change of means of parents.*

Some months ago a "fit person" order committing a child to the care of the local authority was made, and the parents were made liable to make a contribution towards the maintenance of the child weekly.

Since the making of the order, the financial position of the parents has deteriorated, and in view of the fact that the child will eventually be adopted, it would appear that the parents have good grounds for having the amount of the contribution order reduced at the least.

(*a*) Has the court power to revoke or vary a contribution order, or

(*b*) Should the parents make representations to the Secretary of State under s. 89 (1) of the said Act?

J.A.F.S.

Answer.

(*a*) A contribution order can be revoked, revived or varied (Children and Young Persons Act, 1933, s. 87 (4) (*b*) and Criminal Justice Administration Act, 1914, s. 30 (3) as amended by Money Payments (Justices Procedure) Act, 1935, s. 16 (2) and schedule). As to court to which application to vary should be made, see latter part of s. 87 (4) of the 1933 Act.

(*b*) Does not arise.

3.—**Criminal Law**—*Betting—Use of wrong name to place credit bets—Intention to accept winnings—Losses not paid—Is any offence committed?*

Messrs. B & T are commission agents who accept bets by credit from clients not resorting personally to their premises for the laying of such bets. On three consecutive dates A, representing himself to be Z, placed bets by telephone from a village miles away from where he lived, and the firm accepted them through B. A knew at the time that had he given his correct name such bets would not have been accepted, but they would be accepted from Z, who was one of the firm's clients. On the fourth day, A placed similar bets with T and the following day he attempted to place other bets with T who, however, then detected he was not Z, whose voice he knew well. A then said he was an employee of Z and gave another fictitious name, saying he lived at the residence of Z. That evening A called at B & T's office and collected the account for Z, showing a debit on all bets. Some days later A made a statement to the police under caution, admitting the facts and saying he meant to pocket the winnings and that the balance due on the account in the name of Z was owed by him, A. No money was received by the commission agents and the account has not been paid. A did not go to the office to place any bets, but said he would pay the account as soon as possible. It was only on account of the telephone calls being traced by the firm that A was subsequently interviewed, otherwise nobody would have had the slightest indication as to the place from which the calls originated.

It is said that it might be argued that A obtained credit, whilst simultaneously incurring an obligation of the like amount, and that two points should be considered:—

(1) Being a betting contract, the transaction is null and void—s. 18, Gaming Act, 1845.

(2) At no time was any credit given to A; it was given to Z, and a charge under s. 13 (1) of the Debtor's Act, 1869, could not be substantiated.

In my opinion the credit was only given to Z because the commission agents were deceived into the belief that this person was actually placing the bets whereas, in fact, they were being placed by a person to whom they would not, under any circumstances, have granted credit, and I think an offence under s. 13 (1) of the Debtor's Act, 1869, has been committed.

I would be obliged if you would let me have your opinion on this matter, and inform me whether an offence has, in fact, been committed.

J.POCK.

Answer.

R. v. Leon [1945] 1 All E.R. 14; 109 J.P. 58, decided that betting losses are not debts within the meaning of s. 13 of the Debtor's Act, 1869, and that no offence under that section is committed in such circumstances as those detailed in the question.

In the same case a conviction under s. 17 of the Gaming Act, 1845, was upheld, but the basis of this was that there had been some winning bets and the charge was one of fraud in wagering in the winning of those sums. In the case we are now considering there were no payments of winnings and no charge can lie under s. 17. We do not think that the facts disclose any criminal offence.

4.—**Food and Drugs Act, 1938**—*Milk—Section and sch. 3.*

A, my council's sampling officer, purchases from B at B's farm a pint of milk and submits a third portion to the public analyst for analysis. The next day the public analyst informs A that the sample contains added water or is deficient in milk fat, and so A goes to B's farm and informs B of his right to have what is known as an "appeal to cow" sample taken in accordance with the provisions of the third schedule to the Act. B will not serve on my council a written request, but does not object to A taking a sample from a corresponding milking of his cows. This is done, and the public analyst's certificate shows that this milk is genuine. An information against B is laid and a copy of both certificates is served with the summons, and at the hearing it is desired to put in as evidence both of the public analyst's certificates. In the notes to s. 3 in *Bell's Sale of Food and Drugs* (12th edn.) on p. 100 it states "In order to rebut a possible defence that milk was sold as it came from the cow, the prosecution may give evidence that a second sample taken on the subsequent day was above the average. The procedure to be followed in this connexion is described in sch. 3 to the Act."

Your opinion is desired on the following points:—

(*a*) If B objects, can it be properly ruled that the second certificate is inadmissible in evidence because a written notice was not served on my council, and therefore that the provisions of sch. 3 were not strictly complied with?

(*b*) Paragraph (7) of that schedule reads: "If a sample of milk of cows in any dairy is procured in course of transit or delivered from that dairy, the dairyman may . . ." The first sample was taken at the dairy and not in course of transit, and it is also proposed to take the second sample at the dairy. Does this give B the right to take an "appeal to cow" sample at the dairy?

ASMEN.

Answer.

(*a*) B has not served a written request, as he is authorized to do by para. (2) of sch. 3, and therefore para. (3) of that schedule does not apply. So far, we find nothing in sch. 3 to preclude the use of the certificate in evidence.

(*b*) No; para. (7) does not apply.

5.—**Food and Drugs Act, 1938, sch. 3**—*Milk taken in course of delivery.*

A sample of pasteurized milk is taken from A in course of delivery to the consumer. Subsequently, a request, pursuant to s. 84 (2) of and sch. 3 to the Act, is received from A giving notice that the sample taken was sold or consigned to A by B, and giving notice that milk from a corresponding milking will be delivered to A at a certain date and place, and requesting immediate steps to be taken to procure as soon as possible a sample of milk from a corresponding milking in the course of transit or delivery to A from B. On investigation it is found that farmers sell milk to B who, in turn, sells to A. The normal procedure is for the milk from each farm to be tipped into the receiving tanks immediately on arrival and then pasteurized. I shall be glad of your opinion as to whether, in the circumstances, A can legally request a sample to be taken in course of delivery under the provisions of sch. 3 to the Act, and if so, what type of sample should be taken.

AMENSA.

Answer.

Paragraph (7) of sch. 3 would apply if the taking of the sample were requested by the dairyman, who appears in this case to be the person who sent the milk to B. We are, however, inclined to think that A has the right under para (2), and that proviso (*b*) to para. (2) does not rule him out, because it was not he, but B, who obtained the milk from more than one person.

6. Guardianship of Infants Act, 1925 s. 7 (3)—*Appeal to the Chancery Division—Duty of clerk.*

I have noted with interest the last paragraph of your answer to P.P. No. 4 at p. 240, *ante*.

I should be grateful if you could give me your authority for the statement that a copy of the order of dismissal should be furnished. It is my experience that when applications under either the Summary Jurisdiction (Separation and Maintenance) Acts, or the Guardianship of Infants Acts, are refused, no order is in fact drawn up. Your answer seems to indicate that such an order should be drawn. In this connexion may I refer you to r. 68 of the Matrimonial Causes Rules, 1947. Sub-rule 1 discriminates between an order made and the refusal of an order, thereby following the wording of s. 11 of the Summary Jurisdiction (Married Women) Act, 1895. It is true that sub-rule 3 requires copies of the order appealed against to be lodged but sub-rule 4, in calculating the time for entry of an appeal, again discriminates between the date of the order which has been made and the time at which refusal is given.

Appeals in respect of Guardianship of Infants Acts are governed by Rules of the Supreme Court. Order 159, r. 34 appears to be relevant and here again in sub-rule 4 a discrimination is made between the time when the order is signed and the time when the decision is given. Incidentally, I cannot find anything in r. 34 which provides for a copy of the order being furnished, but this is clearly a desirable practice in those cases where an order is in fact made. SOL.

Answer.

We did not say, or mean to suggest, that there was any direct statutory obligation on the clerk to supply a copy of the order of dismissal. These proceedings are, however, by way of complaint under the Summary Jurisdiction Acts, and the dismissal is by order, see Summary Jurisdiction Acts, 1848, s. 14. The defendant may apply for a certificate of dismissal. We think it convenient that a copy of the order of dismissal or certificate of dismissal should be supplied to either party to an appeal who asks for it; and of course the clerk would supply such a document without hesitation if the court required it.

We had also in mind the observations of Lord Merriman reported in a practice note at [1949] W.N. 128 which, we consider, should be applied in principle to cases under the Guardianship of Infants Acts as well as to matrimonial cases.

7. Husband and Wife—*Arrears—Venue—Emergency Laws (Miscellaneous Provisions) Act, 1947—Can the complaint be sent to original court by post?*

Since the making of a maintenance order at court O, the husband who lives in district H has failed to comply with the order. Upon the application of the wife, who is now a resident in district W a considerable distance from court O, the latter court varied the order by substituting the court collecting officer for court W in place of the officer for court O. For a while, the husband's payments showed improvement, but he has again stopped payment.

Can the wife enforce the order upon a certificate of arrears furnished by the court collecting officer of W, and sent to court O for that court to decide the venue, if not, it would appear that the only alternative is for court O to again vary the order by re-appointing their collecting officer. J.A.S.N.

Answer.

The relevant provision requires that the complaint to the original court be made *in writing and upon oath*, and the complaint cannot be sent, therefore, as suggested to court O.

It is often argued that the woman can make her complaint to the court where she resides, and that court can issue process. In this case this is also the court where the money is payable. If that view be taken court W can issue process without resort to the 1947 Act.

8. Husband and Wife—*Maintenance order—Subsequent divorce on wife's petition—Adultery by wife prior to petition—Discharge of order on that ground.*

The wife A obtained a maintenance order before the justices against her husband B in December, 1946, on the grounds of B's desertion in November, 1946. B was ordered to pay A the sum of 10s. per week under the maintenance order. In February, 1950, A commenced divorce proceedings against B alleging desertion upon which she had relied when she obtained the maintenance order. B did not enter appearance and had no intention of defending the suit which was set down for hearing. Before the case came up for hearing B quite accidentally received information which led him to believe that A had committed adultery at a period shortly before she commenced divorce proceedings. B was unable to afford the cost of an inquiry agent to obtain the necessary evidence, but his solicitors wrote to the petitioner's solicitor and informed him of the allegations of adultery. No step was taken to apply for leave to defend or cross-petition. The suit came up for hearing and A was granted a decree on the grounds of B's desertion. She informed her solicitor that she denied adultery, and he wrote B's solicitors to this effect when confirming that a decree had been granted. If at some stage after decree absolute B is in a position to afford the cost of employing an inquiry agent to try and obtain definite evidence of A's adultery prior to the petition, is he entitled to apply to the justices for the maintenance order in favour of A to be revoked? B has at all time complied with the order. JAB.

Answer.

The issue of adultery seems never to have been raised before or adjudicated upon by the High Court in the proceedings for divorce and we think, therefore, that B is entitled, if he now obtains the necessary evidence, to apply for the revocation of the order.

9. Husband and Wife—*Variation—Husband moves abroad after order made in this country—Regular payments—Wife finds amount inadequate—Can she seek to obtain a variation?*

In 1940 Mrs. G obtained, in an English petty sessional court, a maintenance order against her husband under the Summary Jurisdiction (Separation and Maintenance) Acts. Both parties were then living in England. Some time after the order was made the husband went to reside at Ashanti, Gold Coast. He has been remitting regularly and there has been no occasion to have recourse to the Maintenance Orders (Facilities for Enforcement) Act, 1920. The wife now wants the order varied, as she contends the weekly amount she is obtaining under it is insufficient.

Are there any means whereby this can be done? This order was never a "provisional order" under the 1920 Act and the power to vary contained in s. 3 (5) of the 1920 Act appears to be confined to "provisional orders" under that Act.

In a reply at 102 J.P.N. 237 you seem to imply that an order such as Mrs. G's can be confirmed in the dominion and then varied, but is this so? The only orders which can be confirmed would appear to be "provisional orders" and this is not a "provisional order."

I shall be glad of your kind assistance. JEN.

Answer.

We know of no means by which the wife can seek to get her order varied. We think on further consideration that the alternative remedy suggested in our answer to the P.P. referred to by our correspondent is not available.

10. Land—*Party fence—Liability of owners for damage to disrepair.*

Last year my council acquired approximately four acres of land, formerly part of a farm, for the purpose of a children's recreation ground. The land is bounded on three sides by farmland, and on the fourth side by the gardens of council houses and private houses. The vendor formerly owned the whole of the farm and some months previously had sold the farm to the tenant, reserving from the sale the land to be sold to the council. A thorn hedge, patched in places with fencing, runs around the boundaries of the recreation ground, but no reference is made, either in the conveyance to the council or in the conveyance from the previous owner to the tenant of the farm, as to ownership or liability for maintenance. Inquiry on requisition as to whether the fences or hedges were party fences or hedges elicited the reply that the vendor's solicitors did not know, but that an inspection of the position would no doubt help. An inspection merely reveals that the hedges run along the boundaries separating the land in different ownerships. I shall be glad to have your opinion as to the council's liability for:

(*a*) the maintenance of the existing fences or hedges,

(*b*) the improvement of such fences or hedges to prevent trespass from the recreation ground on to the adjoining farmland,

(*c*) any damage caused to the land or premises of adjoining owners arising from the normal use of the recreation ground and/or from persons trespassing therefrom on to such adjoining land or premises. S.JAY.

Answer.

The information given suggests that the vendor sold to each purchaser (the former tenant and the council) half the hedge. It looks as if, when the council houses and private houses were built, the same happened, *i.e.*, there was no express agreement as to the ownership of the physical object marking the boundary and the purchasers acquired half of it. However this may be, the council are not in our

opinion liable to adjoining owners for damage caused by the normal use of the recreation ground, or by trespassers getting access from the ground to the land of neighbours. Equally, on the facts as we understand them, the council cannot complain on the ground that their neighbours have not repaired or maintained the hedges. On each side, the landowner is vulnerable. It seems a pity that the matter was not cleared up before purchase: it might have had a bearing on the price to be paid. As things are now, we think the council might take the initiative in agreeing with adjoining owners how the hedge or fence shall be kept in order.

11.—Landlord and Tenant—*Furnished house sub-let in part—Notice to quit—Protection of sub-lessee.*

A who is the sub-tenant of B makes a reference to the rent tribunal in connexion with the rent for his furnished accommodation, and accordingly any notice to quit served on him by B is not valid whilst A is under the protection of the Rent Acts. The landlord X, however, serves B with a notice to quit his furnished accommodation, and as B is not protected by the Acts he must comply with the terms of the notice and accordingly gives A notice to quit. In these circumstances (*i*) is A still protected during the period of security granted under the Rent Acts, or, if not, (*ii*) is there any protection afforded to A against being evicted from his furnished accommodation? I shall be glad to have my attention directed to any authorities on this point.

A.H.B.C.

Answer.

We think that "No" must be the answer to your questions. By s. 5 of the Furnished Houses (Rent Control) Act, 1946, B's notice to A does not take effect. (This is not quite the same as saying it is "not valid," but this may be academic). B could, however, not confer on A a greater interest than he had himself, and, there being in the Act of 1946 no provisions similar to s. 15 (3) of the Increase of Rent, etc., Act, 1920, A's tenancy ceases to exist on the expiry of B's tenancy. The relation between A and X does not arise out of these Acts, nor indeed out of the law relating especially to landlords and tenants. Once B's rights have ended, A is a mere trespasser.

12.—Landlord and Tenant—*Small Tenements Recovery Act, 1838—Council houses—Clerk's authority to sign notices and institute proceedings.*

The corporation wish to obtain possession of one of their council houses. On the 22nd *ultimo*, a notice to quit signed by me as town clerk was served. On the 5th instant notice of intention to apply to the justices for possession was served. Next day a resolution was passed by the council authorizing the town clerk to institute proceedings where the council required possession of corporation property. On the 7th instant complaint was laid by the town clerk with the clerk to the justices and this was served. At the hearing today the solicitor for the tenant submitted (*a*) that the resolution could not act retrospectively and that at the time the notice to quit and the notice of intention to apply was served the town clerk had no authority. He contended that service of the notices were steps in legal proceedings and that these steps had to be authorized before they were taken and that the resolution could not be retrospective. He agreed that the complaint had been laid after the date of the resolution. (*b*) That proof of the resolution passed by the council was not sufficient when only a certified copy signed by the town clerk was produced at the hearing. He contended that the minute book should be produced by the town clerk.

The solicitor representing the corporation was offered an adjournment to produce the minutes but refused one. The magistrates did however adjourn the hearing for a week in order that the legal points might be considered. Would you please advise:

(*a*) On the submission.

(*b*) Whether the solicitor for the corporation can at the next hearing still ask and be granted an adjournment to produce the minute book when he has already refused one as he stated he was prepared to rely on the certified copy.

Ast.

Answer.

We take first what seems to us to be a mistake by the council's solicitor, viz., strict proof of the resolution. Our impression is that this is seldom insisted on, and its absence, if not insisted on, does not invalidate the hearing: *Kates* v. *Jeffery* (1914) 78 J.P. 310. The tenant's solicitor was, however, entitled to strict proof, by production of the minute book, signed as provided by para. 3 of Part V of sch. 3 to the Local Government Act, 1933. Where Parliament intends that a certified resolution or extract shall be enough, it says so: *see* s. 268 of the Public Health Act, 1936. The council's solicitor ought therefore to have accepted the offer of an adjournment for this purpose, but, since the case has in fact been adjourned, there is nothing to prevent his producing the signed minutes at the next hearing. A rather subtle point arises here, which may be important upon dates. The resolution of the 6th instant will, probably, not appear in the regular course in signed minutes until the next meeting which will (apparently) be later than the adjourned hearing in court. Now turn to para. 3, *supra*. This is rather a condensed enactment. It says that "the minute shall be signed at the same or the next ensuing meeting," which is one thing. It also says that "any minute purporting to be so signed shall be received in evidence without further proof." What we have called the subtle point arises on the word "so". Since minutes are practically never signed at the same meeting, does "so signed" mean "signed at the next ensuing meeting," in which case you cannot put the required minute in evidence until after that meeting? The answer is that "so signed" means "signed by the person presiding *either* (italics ours) at the meeting to which the minutes relate *or* at the next ensuing meeting. If therefore the mayor or whoever presided when the resolution was passed is available, and you can get his signature to the minutes before the adjourned hearing by the magistrates, you are all right: *Southampton Dock Co.* v. *Richards* (1840) 1 Man. & G. 448. If you cannot do this, the council's solicitor can, in our opinion, ask for a further adjournment until after the next council meeting, but it is for the magistrates to say whether this shall be granted. Upon the other legal issue we are against the tenant's solicitor. The notice to quit and the notice of intention required by the Small Tenements Recovery Act, 1838, are not the instituting, or even steps in instituting, legal proceedings within s. 277 of the Local Government Act, 1858. We infer that both notices were signed by the town clerk, though this is not stated. We do not suppose that the town clerk is usually employed in collecting the rents (*see* the definition of "agent" in s. 7 of the Act of 1838), but we do suppose that he is usually employed (note that the definition does not require him to be the person primarily employed) in letting premises under the Housing Acts, so that he can sign as agent under s. 1 of the Act of 1838, without being specially authorized under s. 7. There is another possible line of approach, viz., that s. 7 expressly recognizes corporate bodies, and so might be thought impliedly to recognize signature by the normal representative of such a body, but this may not be a very safe line, in face of the limiting definition of the word "agent."

13.—Magistrates—*Supplemental list—Not entitled to sign summonses.*

I shall be glad if you will let me have your opinion as to whether magistrates transferred to the supplemental list by virtue of the Justice of the Peace Act, 1949, are entitled to sign summonses issued

upon informations laid by superintendents of police or other informants. It is not quite clear in the Act whether magistrates can in fact sign summonses. JUR.

Answer.

A summons must be signed (with a special exception in certain cases of complaints in bastardy) by the justice before whom the information is laid or the complaint made.

The only acts as a justice which may be done by one who is on the supplemental list are set out in s. 4 (3) of the Justices of the Peace Act, 1949, and these do *not* include the hearing of informations and complaints and the signing of summonses.

14. Rating and Valuation—*Agricultural exemption—Office on farm.*

Farmer clients of ours have, some years ago, built upon their farm a building which is used exclusively as an office. There is no living accommodation attached and it is used merely for the necessary clerical work in connexion with the farm itself. It has appeared in the valuation list since it was built and rates have always been paid upon it. Recently, however, lavatory accommodation has been installed and the local district valuer has proposed that the valuation list should be amended by what he considers a suitable increase. We are a little in doubt as to whether or not the building is an "agricultural hereditament." It seems to us that in this day and age an office is as essential to a farmer as a cowhouse, barn, or any other more obviously agricultural building, but we can find no authority on the subject. A.M.E.

Answer.

We do not find that the status of a farm office has been litigated, but we see no difficulty about regarding it (with or without sanitary accommodation for the office staff) as being an "agricultural building" within the definitions in the Rating and Valuation Act, 1925 to 1929.

15. Road Traffic Acts—*Disqualification by conviction—Conditional or absolute discharge—Effect of* s. 12 (2), *Criminal Justice Act*, 1948.

My justices convicted a defendant under s. 35 of the Road Traffic Act, 1930 and imposed the prescribed penalty of twelve months' disqualification. In addressing the justices on behalf of the defendant, counsel suggested that s. 12 (2) of the Criminal Justice Act, 1948 had the effect of permitting the justices to make an order of absolute or conditional discharge and not to impose any disqualification. I have read this section carefully and am unable to come to any definite conclusion as to what exactly it does mean.

I should be glad of your views as to whether it leaves the old position under the Probation of Offenders Act, 1907 unchanged, or whether the effect is that even if the justices make an order of absolute or conditional discharge where the defendant is charged under s. 35 of the Road Traffic Act, 1930, they still have to disqualify him for twelve months.

Bearing in mind the decision in *Quelch* v. *Collett* (1948) 112 J.P. 167 and *Gardner* v. *James* [1948] 2 All E.R. 1069 and the remarks of the Divisional Court in these cases this seems very important. JOC.

Answer.

If a defendant after conviction is dealt with by probation or by conditional or absolute discharge, s. 12 (2) provides that there can be no disqualification as a result of that conviction.

We agree that the decisions in the cases cited are relevant in this connexion. It is most important that courts should not use probation or conditional or absolute discharge merely because they wish there to be no disqualification but cannot properly find special reasons for so ordering.

16. Road Traffic Acts—*Endorsement—Absolute discharge for careless driving—Must endorsement be ordered?—Special reasons.*

The justices convict a defendant of an offence of driving a motor vehicle without due care and attention, contrary to s. 12 of the Road Traffic Act, 1930. As the facts which were proved disclosed an offence which was little more than an error of judgment, they decided to grant the defendant an absolute discharge under s. 7 (1) of the Criminal Justice Act, 1948. Having regard to the provisions of subss. (1) and (2) of s. 12 of the 1948 Act must they now order particulars of this conviction to be endorsed on the defendant's driving licence in accordance with s. 5 (1) of the Road Traffic Act, 1934, unless they find a special reason for ordering otherwise? If your answer is yes, can the fact that the offence was not dangerous in its consequences constitute a special reason for this purpose? JUNO.

Answer.

We do not think that the endorsement can be avoided under s. 12 (1) of the 1948 Act or that it is a disqualification or disability within s. 12 (2). Therefore endorsement must be ordered.

We are doubtful whether the mere fact that the offence was not dangerous in its consequences constitutes a special reason, and we think that one needs to know all the facts of a case to decide whether or not special reasons exist. It is to be borne in mind that careless driving often has no dangerous consequences, and that driving which has is often charged under s. 11.

17. Theatre—*Licence—Right of member of public to object.*

Is there any right of the public to object to the grant of a theatre licence, and what grounds should the justices allow to influence them in coming to their decision?

The manager of a repertory theatre which has, after a long period of hard work, achieved considerable public support desires to object to the grant of a theatre licence to what is now a cinema where it is proposed to present stage plays as he fears that such plays presented in more attractive premises than his may, in effect, put him and his company out of business.

Has he a right to object when the application is made, and if so would it not be improper for the justices to allow the manager and his company's prospective financial loss to influence them?

It is thought that only the public interest should be considered which could not, it would seem, be harmed by another theatre, though it will doubtless be argued on behalf of the manager that the public are already adequately served by his theatre. NEMO.

Answer.

In our opinion, it is proper for the justices to hear a member of the public who desires to be heard in objection to the grant of a theatre licence. We think that the dictum of Lord Herschell in *Boulter* v. *Kent JJ.* (1897) 61 J.P. at p. 534, is wide enough to cover the case: "The applicant seeks a privilege. A member of the public who objects merely informs the mind of the court to enable it rightly to exercise its discretion whether to grant that privilege or not. A decision that the licence should not be granted is a decision that it would not be for the public benefit to grant it." We recommend our correspondent to read the above dictum in its context and to note the emphasis which Lord Herschell places on "public interest." It seems that in the case outlined by our correspondent the objection is in protection of a private interest corresponding almost to a monopoly.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

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